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COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, October 3, 2002

JOINT PETITION OF

CASE NO. PUC-2002-00131

ONFIBER CARRIER SERVICES – VIRGINIA, INC.  
and  
SPHERA OPTICAL NETWORKS (VIRGINIA) N.A., INC.

For approval of the transfer of the assets,  
including the carrier customers, of Sphera  
Optical Networks (Virginia) N.A., Inc., to  
OnFiber Carrier Services – Virginia, Inc.

ORDER GRANTING APPROVAL

On July 8, 2002, OnFiber Carrier Services – Virginia, Inc. (“OnFiber Carrier Services – VA”), and Sphera Optical Networks (Virginia) N.A., Inc. (“Sphera N.A. – VA”) (together, the “Petitioners”), filed a joint petition with the State Corporation Commission (“Commission”) requesting approval, under the Utility Transfers Act, for the transfer of assets, including the carrier customers, of Sphera N.A. – VA to OnFiber Communications, Inc., the parent company of OnFiber Carrier Services – VA.

OnFiber Carrier Services - VA is a Virginia corporation incorporated on April 10, 2000. Its principal place of business is located in Austin, Texas. In Virginia, OnFiber Carrier Services - VA is authorized to provide interexchange telecommunications services pursuant to certificate of public convenience and necessity (“CPCN”) No. TT-109A granted on September 19, 2000, in Case No. PUC-2000-00133 (PUC000133). OnFiber Carrier Services - VA is also authorized to provide facilities-based local exchange telecommunications services pursuant to CPCN No. T-506 granted in Case No. PUC-2000-00133 (PUC000133) on that same day.

OnFiber Carrier Services, Inc. (“OnFiber Carrier Services”), an affiliate of OnFiber Carrier Services - VA, provides telecommunications services in other states. OnFiber Carrier Services is a privately held Delaware corporation, incorporated on October 20, 1999. Its principal place of business is also located in Austin, Texas. OnFiber Carrier Services is currently authorized to provide resold and facilities-based local exchange and interexchange telecommunications services in 19 states.

Both OnFiber Carrier Services - VA and OnFiber Carrier Services are wholly owned subsidiaries of OnFiber Communications, Inc. (“OnFiber”). OnFiber, through its subsidiaries, operates fiber optic networks in major metropolitan areas, delivering broadband connectivity services primarily to other carriers and Internet Service Providers (“ISPs”) through SONET, Ethernet, and Optical Wavelength product offerings.

Sphera N.A. - VA is a Virginia corporation incorporated on September 1, 2000. Its principal place of business is located in New York, New York. In Virginia, Sphera N.A. – VA is authorized to provide facilities-based interexchange telecommunications services pursuant to CPCN No. TT-134A approved in Case No. PUC-2000-00256 (PUC000256) on February 5, 2001. Sphera N.A. - VA is also authorized to provide facilities-based local exchange telecommunications services pursuant to CPCN No. T-539 approved in Case No. PUC-2000-00256 (PUC000256) on that same day.<sup>1</sup>

Sphera Optical Networks, N.A., Inc. (“Sphera N.A.”), an affiliate of Sphera N.A. – VA, provides telecommunications services in several other states. Sphera N.A. is a privately held Delaware corporation incorporated on February 19, 2000. Its principal place of business is also located in New York, New York. Sphera N.A. is currently authorized to provide resold and

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<sup>1</sup> In the joint petition, Sphera N.A. - VA requests the Commission to cancel the above-referenced CPCNs and applicable tariffs. This request will be handled in a separate proceeding (PUC-2002-00162).

facilities-based local exchange and interexchange telecommunications services in approximately eight states.

Sphera N.A. – VA and Sphera N.A. are both wholly owned subsidiaries of Sphera Optical Networks, Inc. (“Sphera”). Through its subsidiaries, Sphera provides broadband connectivity services primarily to other carriers and ISPs over fiber optic networks in major metropolitan areas. Sphera’s entire customer base is comprised of only 20 customers in approximately seven states, including Virginia. Of these 20 customers, two of the customers are located in Virginia and are served via contract by Sphera N.A. – VA. These customers are provided high-speed data transmission services (SONET). None of these customers are end user subscribers of local, intraLATA toll, or long-distance services.

On February 11, 2002, Sphera and Sphera N.A. filed a joint petition for reorganization under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (“Bankruptcy Court”). On February 12, 2002, Universal Access, Inc., announced its intention to acquire Sphera and negotiated a written agreement incorporating the terms of a sale. That deal collapsed on April 24, 2002, when Universal Access, Inc., filed a motion to terminate that agreement.

After the collapse of the Universal Access, Inc., Agreement, negotiations began between Sphera, Sphera N.A., and OnFiber, which resulted in the Asset Purchase Agreement attached to the joint petition. Pursuant to this Agreement, OnFiber agreed to acquire substantially all of Sphera’s telecommunications assets including its customer accounts and contracts. Due to Sphera’s dire financial situation, the Bankruptcy Court approved the transfer of Sphera’s assets to OnFiber, including its customer contracts, on May 2, 2002. Pursuant to the Bankruptcy Court

Order (“Sale Order”) entered May 10, 2002, the transaction was to occur on or before May 9, 2002, under the terms of the Asset Purchase Agreement.<sup>2</sup>

The Petitioners request that the Commission approve the transfer of Sphera’s telecommunications assets and associated customers to include the assets and customers of Sphera N.A. - VA to OnFiber Carrier Services –VA.<sup>3</sup> The assets to be transferred include Sphera’s facilities-based telecommunications assets and the operations and existing customer base associated therewith. The total sales price for all of the assets of Sphera, including the assets of Sphera, N.A. - VA, is set at approximately \$2.4 million. The Bankruptcy Court determined that this price was the highest and best offer received for the sale of the assets.

THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the transaction, as described herein, involving the transfer of the assets of Sphera N.A. – VA to OnFiber Communications, Inc., will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, approval is hereby granted for the transfer of the assets of Sphera N.A. – VA to OnFiber Communications, Inc., as described herein.
- 2) There appearing nothing further to be done in this matter, it is hereby dismissed.

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<sup>2</sup> In the Sale Order, the Bankruptcy Court noted that the parties agreed to obtain the necessary regulatory approvals following the closing of the above-referenced transaction.

<sup>3</sup> OnFiber is the buyer of Sphera’s assets. OnFiber’s wholly owned subsidiary, OnFiber Carrier Services – VA, will be the entity actually operating the assets and providing service to customers in Virginia.